



State of Rhode Island  
RHODE ISLAND BOARD OF EDUCATION  
255 Westminster Street  
Providence, Rhode Island 02903-3400

Enclosure 6b  
August 18, 2020

Barbara S. Cottam  
Chair

August 18, 2020

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Secondary Education**

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**TO:** Members of the Council on Elementary and Secondary Education

**FROM:** Amy Beretta, Appeals Committee Chair

**RE:** Approval of Appeals Committee Recommendation –  
Nicholas Barrow vs. RI Department of Education (RIDE) and  
Anthony Cottone, Esq., in his official capacity

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The Appeals Committee of the Council on Elementary and Secondary Education met on July 21, 2020, to hear oral argument on the appeal of the following matter:

**Nicholas Barrow vs. RIDE and Anthony Cottone, Esq., in his  
official capacity**

**RECOMMENDATION: THAT, in the matter of Nicholas Barrow vs. RIDE and Anthony Cottone, Esq., in his official capacity, Mr. Barrow's Appeal is Denied and Dismissed, as presented.**

**STATE OF RHODE ISLAND**

**COUNCIL ON ELEMENTARY  
AND SECONDARY EDUCATION**

**NICHOLAS R. BARROW**

**vs.**

**RHODE ISLAND DEPARTMENT OF  
ELEMENTARY AND SECONDARY  
EDUCATION AND ANTHONY  
COTTONE, ESQ., in his official capacity**

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**DECISION**

This is an appeal by Mr. Nicholas R. Barrow (“Mr. Barrow”) from the “Final Order Denying Petitioner’s November, 2019 Requests for Relief” (the “Final Order”) entered by the Commissioner of Education (“Commissioner”) on November 21, 2019, whereby the Commissioner denied and dismissed Mr. Barrow’s “Appeal of Matters of Dispute Before the Commissioner” (the “Hearing Request”). After entry of the Final Order, Mr. Barrow filed an appeal of the Final Order on December 14, 2019. In essence, Mr. Barrow asks the Rhode Island Council on Elementary and Secondary Education (the “Council”) to order a hearing at which Mr. Barrow can challenge the substantive components of guidance document No. 2196 issued by the Rhode Island Department of Elementary and Secondary Education (“RIDE”) on April 10, 2019 (the “Field Trip Guidance”).

Mr. Barrow is a resident of North Providence, RI and served as a Student Advisory Councilman of North Providence. On September 24, 2019, Mr. Barrow filed a petition to revise or repeal the Field Trip Guidance, or in the alternative to replace the Field Trip Guidance with a rule, both pursuant to the Administrative Procedures Act (the “APA”). *See* R.I.G.L. §42-35-

2.12.<sup>1</sup> In a letter dated October 7, 2019, RIDE Legal Counsel Anthony Cottone, Esq. (“Attorney Cottone”) denied the petition in accordance with the APA. Mr. Barrow replied to the letter and renewed his request to repeal the Field Trip Guidance, which was again denied by Attorney Cottone in a letter dated October 17, 2019. Subsequently, Mr. Barrow filed the Hearing Request and asked for a full hearing to appeal Field Trip Guidance as an “Appeal of Matters of Dispute to the Commissioner” pursuant to R.I.G.L. §16-39-1. On November 21, 2019, the Commissioner entered the Final Order dismissing the Hearing Request, finding that it did “not set forth a proper appeal to the Commissioner . . . “ *Final Order* at p. 3.

On November 21, 2019, Mr. Barrow filed a notice of intent to appeal the Final Order and, on December 14, 2019, submitted a formal appeal asking the Council to consider the matter pursuant to R.I.G.L. §16-39-3. The Council reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that based upon the travel of this matter Mr. Barrow does not possess the requisite standing to demand an appeal to the Commissioner pursuant to R.I.G.L. §16-39-1. Therefore, there is no jurisdiction for the Council to consider an appeal of the Final Order pursuant to R.I.G.L. §16-39-3.

This Council has on multiple occasions recognized the requirement of legal standing to bring an appeal before the Commissioner. Specifically, the Council has noted “the requirement of standing is an element of the Commissioner’s hearing process . . . and has been continually required in administrative precedent . . . “ Doe v. RIDE, decision dated May 8, 2017 at p. 3 (citing Bristol-Warren Save Our Schools v. Bristol-Warren Regional School Committee, decision dated May 26, 2011 at pp. 4 and 7). To demonstrate standing a party must show that a

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<sup>1</sup> Throughout the filings in this matter, Mr. Barrow maintained attempted appeals of an Access to Public Records Act request. However, jurisdiction to hear such complaints are vested in an agency’s Chief Administrative Officer, the Attorney General, and the Superior Court. *See* R.I.G.L. §38-2-8 and R.I.G.L. §38-2-9. As there is no jurisdiction to consider these aspects, they will not be discussed further in this decision.

“legally cognizable and protectable interest must be ‘concrete and particularized and actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) (quoting Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997)). In this matter, Mr. Barrow has failed to demonstrate that he has suffered a concrete and particularized injury in fact. Without such a concrete and particularized injury, Mr. Barrow cannot prosecute his appeal before the Commissioner as he has no legal standing for such a challenge.

Mr. Barrow posits that if he cannot pursue this challenge before the Commissioner, then there is no remaining avenue for students to challenge the substance of the Field Trip Guidance. However, the lack of an injury in fact in this matter does not mean that no student in Rhode Island could experience a particularized injury and pursue an appeal with the requisite legal standing. The Council must deal with each matter based upon the record transmitted on appeal and the facts contained therein. Legal standing has long been held to be an “access barrier” restricting the ability of those without a concrete and particularized injury from presenting the merits of a claim. *See, e.g., McKenna v. Williams*, 874 A.2d 217, 223 (R.I. 2005). Therefore, whether any other members of the public would have an avenue to present the merits of a disagreement is ultimately inapposite. In the matter before the Council,

Mr. Barrow wishes to challenge the merits of the Field Trip Guidance without presenting any evidence that he has experienced a particular injury arising therefrom.

When evaluating a Commissioner’s decision the Council is asked to review whether it is “patently arbitrary, discriminatory, or unfair.” Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975). However, both appeals to the Commissioner and appeals to the Council require legal standing. The standing requirement is also recognized by the Procedural Rules for Appeals from Decisions of the Commissioner which states that appeals to

the Council may be brought by a “party aggrieved by a final decision of the Commissioner.” 200-R.I.C.R.-30-15-4.4(A). Because Mr. Barrow has not demonstrated a particularized injury in his request to appeal the Field Trip Guidance and he is not a “party aggrieved,” we must deny and dismiss the appeal for lack of standing.<sup>2</sup>

For the reasons stated herein, Mr. Barrow’s appeal is denied and dismissed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on July 21, 2020.

Council on Elementary and Secondary Education

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Daniel McConaghy, Chair

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Amy Beretta, Appeals Committee Chair

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<sup>2</sup> As was recognized by the Appeals Committee in its recommendation to the Council, we note that the General Assembly has identical legislation pending in both the Senate and the House of Representatives, S2327a and H7069b. In the event that legislation is enacted prior to issuance of this decision, the content of the legislation would certainly moot the merits of Mr. Barrow’s appeal. If the legislation becomes law, it will provide an additional, independent reason for dismissal of the appeal. See *In re New England Gas Company*, 842 A.2d 545, 553 (R.I. 2004) (“ . . . a case is moot if . . . events occurring after the filing have deprived the litigant of a continuing stake in the controversy.”).